



HUMAN RIGHTS & DISCRIMINATION COMMISSION

ACT Human Rights Commission

Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam

Sex and Age Discrimination Legislation Amendment Bill 2010

I write in relation to the Senate Legal and Constitutional Committee's Inquiry into the *Sex and Age Discrimination Legislation Amendment Bill 2010*. The Bill echoes many of the existing provisions of the ACT *Discrimination Act 1991*, which the Commission has found to offer effective protection against discrimination in a range of areas of public life. I welcome that Items 31 and 32 of Schedule 1 of the Bill will ensure the ACT Discrimination Act will continue to apply in parallel with these new Commonwealth protections.

Inclusion of Breastfeeding

I note Items 3, 4 and 23 of Schedule 1 of the Bill will include breastfeeding as a separate ground of discrimination in the *Sex Discrimination Act 1984* ('SDA'). Section 7 of the ACT Discrimination Act includes breastfeeding as a separate attribute, and in our experience, this is often cited as a discreet ground of discrimination in complaints. Whilst the Commission received no complaints in relation to this attribute in the previous two financial years, in 2007-08 the Commission considered two complaints of unlawful discrimination because of breastfeeding, and several in previous years.

Family Responsibilities

Items 5 and 18 of Schedule 1 of the Bill will amend the objects of the SDA to include the elimination, so far as possible, of discrimination on the ground of family responsibilities in the area of work. This will remove the current reference to dismissal, and the reference to 'the area of work' rather than 'employees', to reflect the broadened prohibition of discrimination on the ground of family responsibilities.

This is also broadly consistent with the current provisions of the ACT Discrimination Act. Under sections 7 and 8 and Part 3 it is unlawful to treat someone unfavourably because of their parent or carer status in a range of employment areas including in employment, applying for employment, contract workers, commission agents, partnerships and employment agencies. The number of complaints handled by the Commission based on parent or carer status has fluctuated in recent years, from a height of 11% of complaints in 2008-09 down to 2% in 2009-10. Nonetheless, this is frequently a ground cited of complaint in the ACT and we welcome this change nationally.

Sexual Harassment

I broadly support the changes to unlawful sexual harassment provisions in the SDA.

I note the expansion of sexual harassment protection for students of all ages in an educational facility. This reflects the current ACT Discrimination Act. I also welcome the reform of sexual harassment in goods and services, to include a clients or customers of providers sexually harassing that provider. This is not currently included in the ACT Discrimination Act and something we have previously identified as lacking. Similarly, the ACT Discrimination Act does not include protection for students sexually harassed by staff of *another* education institution. Again, this is something we will note in our future law reform suggestions.

I note the Bill also makes changes to the list of factors which may be relevant in determining whether a sexual harasser should have anticipated the possibility that the person harassed would be offended, humiliated or intimidated. The ACT Discrimination Act has a different construction of sexual harassment, based on whether the victim reasonably felt offended, humiliated or intimidated. As such, I offer no comment on the changes to the Commonwealth protection.

Age Discrimination Commissioner

I support the creation of a Federal Age Discrimination Commissioner in the Bill. However, I am troubled by the language of the Explanatory Memorandum to the Bill, which states:

'The ADA makes discrimination on the grounds of age unlawful in specified areas of public life but does not provide for a dedicated Age Discrimination Commissioner to advocate for the rights of people, particularly older Australians, who experience age discrimination.'

Whilst there are well documented issues of employment concerning older workers, age discrimination can be unlawful in a range of areas and the particular issues of children and young people should not be forgotten. The ACT has a dedicated Children and Young People Commissioner, and if the concerns of children and young people are not to be prioritised by the Federal Age Discrimination Commissioner, then a dedicated Federal CYP Commissioner should be considered. I have advocated for this need for many years having been responsible for preparing the brief of the Australian Delegation on the draft Convention in 1989.

Thank you for the opportunity to comment on the Bill.

Yours sincerely

Dr Helen Watchirs
Human Rights and Discrimination Commissioner
27 October 2010